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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Jeff Pokorny, Larry Blenn, and Kenneth Busiere, on behalf of themselves and those similarly situated.

- ) CASE NO. C 07-0201 SC
- )
- ) PLAINTIFFS' SUBMISSION TO THE
- ) COURT OF OBJECTIONS TO SPECIAL
- ) MASTER'S REPORT

## Plaintiffs,

V.

Quixtar, Inc.,

**Defendant.**

Plaintiffs hereby submit the 28 objections to the Special Master’s report and recommended hardship awards (DE 322) that have been filed by Section IV “special hardship” claimants (the “Objectors”). Pursuant to this Court’s order appointing the Special Master (DE 252 ¶ 18), the Objectors are entitled to *de novo* review of their claims by the Court.

## BACKGROUND

The parties' Court-approved settlement agreement provided for a special hardship fund from which former Quixtar IBOs who are members of the Settlement Class could receive a cash

1 payment of 20% of their losses, up to a maximum of \$10,000, if they could show that their  
 2 recruitment into and operation of their Quixtar business (i) caused them to file for personal  
 3 bankruptcy or (ii) caused a loss of at least \$10,000 from operating their Quixtar business. The  
 4 hardship claims were to be adjudicated in the first instance by a Court-appointed Special  
 5 Master. DE 162-2 § 6.1.2. Losses had to be proven by a “Schedule C or other schedule from a  
 6 federal tax return, schedules filed in connection with a bankruptcy filing, or comparably reliable  
 7 documentation acceptable to the Special Master.” *Id.* § 6.1.2(c).

8 After approving the settlement, the Court duly appointed former Magistrate Judge James  
 9 Larson as Special Master. Over 5,900 filed a hardship claim. However, about 4,400 failed to  
 10 submit any documents in support of their claims, despite repeated notice that documentation  
 11 was required, and the Special Master summarily denied all of these claims. The Special Master  
 12 adjudicated the remaining 1,500 or so hardship claims individually. After eliminating  
 13 “duplicates and several fraudulent claims,” the Special Master approved 1,213 claims and  
 14 denied 224. DE 322 at 2. He then filed his report and recommendations on December 18, 2013  
 15 (DE 322). This Court approved the report and proposed appeal procedure by order dated  
 16 January 3, 2014 (*id.*).

17 In response to the January 3 order, the Claims Administrator (Rust Consulting) has sent  
 18 notices to the hardship claimants. The notices advised each hardship claimant whether his/her  
 19 hardship claim had been approved or denied by the Special Master and the amount, if any, of  
 20 the recommended award. The notices further advised claimants that, if they wished to object to  
 21 the Special Master’s recommendation regarding their claim, they should submit a written  
 22 objection, with detailed reasons and evidence supporting the objection, by February 14, 2014.  
 23 Declaration of Jason Stinehart (“Stinehart Decl.”) ¶ 4.

24 In response to the notices, the Claims Administrator received 31 objections to the  
 25 Special Master’s recommended awards, three of which were subsequently withdrawn. Plaintiffs  
 26 now submit the remaining 28 (including five which were filed untimely, Stinehart Decl. ¶ 10) to  
 27 the Court for final determination. Copies of these 28 objections, along with the original  
 28 documents previously submitted by each claimant and considered by the Special Master, are

1 attached as Exhibit A to the Declaration of Jason Stinehart, which is being filed  
 2 contemporaneously herewith. An index to the 1,751 pages of documents contained in Stinehart  
 3 Exhibit A is attached as Exhibit 1 to this brief.

4           In sending the notices, the Claims Administrator made an error of which the Court  
 5 should be aware. A letter stating “As you did not submit any documents in support of your  
 6 claim, Master Larson is recommending to the Court that you not be awarded any hardship  
 7 payment” should have been sent only to the 4,400 claimants who did not submit any documents  
 8 at all and whose claims were therefore denied summarily. However, due to a “coding error,”  
 9 some of the 224 claimants whose claims were individually reviewed and denied were sent the  
 10 same “you did not submit any documents” letter, when in fact they had submitted documents,  
 11 which the Special Master reviewed, although he ultimately denied the claim on its merits.  
 12 Stinehart Decl. ¶ 6. Thus, some Objectors (e.g., Kim, Yacobo, M. Smith) correctly point out  
 13 that the notice letter they received was erroneous in this respect.

14           I.        **COMMENTS ON THE OBJECTIONS**

15           A.        **The 1207 Hatfield Ct. Claimants**

16           As mentioned above, the Special Master noticed “several fraudulent claims” in the  
 17 course of his review. He apparently was referencing the numerous claims from a single address  
 18 – 1207 Hatfield Ct. in Abingdon, MD. The Claims Administrator has advised that over **2,000**  
 19 claims were filed from this single address. Stinehart Decl. ¶ 7.<sup>1</sup> Eleven of these included  
 20 hardship claims. Each of the hardship claims was nearly identical, except for names and  
 21 amounts. The Special Master denied the hardship claims from the 1207 Hatfield address. Of  
 22 the 29 total objections, ten (Mei, Yang, Dong, Huang, Yu, Wei, Chen, Liu, Qi, and Fan) are  
 23 from this same 1207 Hatfield address. *See* Stinehart Decl. at Ex. A, Pgs. 1-938. Again, all are

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27           <sup>1</sup> After the street address, some state “#G001,” “#G007,” etc., but according to Google maps the  
 28 address is a single-family home. The ten objections from 1207 Hatfield Ct total 936 pages, which  
 is more than half of the total pages in Stinehart Exhibit A.

1 virtually identical, except for names and amounts.<sup>2</sup> Plaintiffs do not know who is submitting  
 2 these claims but they are patently dubious.

3           **B. Objectors Seeking Greater Than 20% of Claimed Losses**

4           As noted above, successful hardship claimants are entitled to a cash payment of 20% of  
 5 their losses, up to a maximum of \$10,000. DE 162-2 § 6.1.2. Three Objectors received awards  
 6 based on this formula but seek a higher amount.

7           Anthony D'Apolito claimed \$13,000 in losses and was awarded the 20% maximum, for  
 8 an award of \$2,600. He objects and asks that he be awarded \$10,000. See Stinehart Decl. at  
 9 Ex. A, Pgs. 939-960.

10          The objection of Christine Mattos requests an increase of her award from \$2,000 to  
 11 \$8,000. She claims to have suffered a loss of \$11,190. If accepted in full, 20% of that amount  
 12 is \$2,238. *See* Stinehart Decl. at Ex. A, Pgs. 1310-1448.

13          Steve and Rachel Morton claimed a loss of \$18,376.39, and the Special Master awarded  
 14 them almost a full 20% of this amount, a gross award of \$3,625. After the mandatory deduction  
 15 of their \$2,000 Section III payment, their net award is \$1,625. They have filed an untimely  
 16 objection and request an increase of this amount. *See* Stinehart Decl. at Ex. A, Pgs. 961-1065.

17           **C. Claimants Who Did Not Submit Tax or Bankruptcy Documents**

18          As mentioned above, hardship claimants were obliged to submit "Schedule C or other  
 19 schedule from a federal tax return, schedules filed in connection with a bankruptcy filing, or  
 20 comparably reliable documentation acceptable to the Special Master." DE 162-2 § 6.1.2(c).  
 21 Some objectors did not submit any tax schedules or bankruptcy documents, and the Special  
 22 Master apparently was unconvinced that the documents they did submit were "comparably  
 23 reliable" in nature.

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24

25          <sup>2</sup> Just for example, each of the ten Hatfield Ct. objections attaches a purported Schedule C and  
 26 states the following (*sic*): "Thankfully I borrowed money from my friends and paid back the  
 27 credit card debts. In the past 8 years, I have gone through a very hard time. I am working day  
 28 and night to pay back the money I borrowed from my families and friend. Hopefully, *Pokorny v. Quixtar Class Action Settlement* can give me this opportunity to get some compensation, such  
 that I can pay back my friends to keep the friendship running."

1           Billy Smith (not to be confused with objector Mark Smith) did not allege bankruptcy  
 2 and his submission does not include any tax schedules. He relies instead on affidavits from  
 3 himself and two others. *See* Stinehart Decl. at Ex. A, Pgs. 1129-1181. The issue is whether this  
 4 evidence (and similar self-generated documents relied on primarily or exclusively by many  
 5 objectors) is “comparably reliable” to tax returns and bankruptcy court documents. DE 162-2 §  
 6 6.1.2(c).

7           Phillip Archer’s objection and his prior submission to the Special Master state that he is  
 8 on public aid and behind on bills because “the AMWAY global opportunity did not work out to  
 9 my best interest.” His supporting documents indicate he is being pursued by creditors, but none  
 10 of the submitted documents mentions Quixtar or indicates that the losses and the bankruptcy  
 11 were the result of involvement with Quixtar. He has not submitted any tax return schedules or  
 12 bankruptcy documents. *See* Stinehart Decl. at Ex. A, Pgs. 1066-1086.

13           Faustino Yacobo’s submission consisted of assorted business cards, copies of checks in  
 14 his favor from Quixtar, his Quixtar IBO application, and a number of receipts and ticket stubs,  
 15 apparently for Quixtar events. He does not allege that he filed for bankruptcy as the result of  
 16 his Quixtar participation, no tax return was submitted, and the ticket stubs and other documents  
 17 do not show a loss greater than \$10,000. *See* Stinehart Decl. at Ex. A, Pgs. 1087-1128.

18           Emeka Anyalewe has also not submitted any tax or bankruptcy documents. Along with  
 19 a handwritten narrative and some apparently irrelevant documents (such as Requests for  
 20 Admission from a different court case), he has only submitted copies of a few Quixtar CDs and  
 21 some store receipts totaling less than \$10,000. *See* Stinehart Decl. at Ex. A, Pgs. 1182-1220.

22           Objector Martin Petro also has not submitted any tax or bankruptcy documents. He  
 23 states that he discarded all of his Quixtar-related records. *See* Stinehart Decl. at Ex. A, Pgs.  
 24 1221-1230.

25           Objector Monique Jackson states she has “lost access” to her records and relies on a  
 26 letter and her Social Security statement. She originally submitted a 2003 Schedule C, which  
 27 showed a loss of \$5,014, which is less than the \$10,000 loss required for a hardship award. *See*  
 28 Stinehart Decl. at Ex. A, Pgs. 1292-1309.

1           Bumjin Kim did submit documents but was erroneously sent a “failure to submit  
 2 documents” notice letter. The Special Master reviewed his documents and denied his claim.  
 3 Mr. Kim sent a letter, some receipts, federal Form 1040A tax returns for 2003 and 2004, and  
 4 federal Form 1040 tax returns for 2005 and 2006. He did not submit a Schedule C with any of  
 5 these returns. However, line 12 on both the 2005 and 2006 Form 1040 states a substantial  
 6 business income gain, not a loss, for those years. *See* Stinehart Decl. at Ex. A, Pgs. 1231-1291.

7           **D. Documents Never Received**

8           Two Objectors state that they have submitted documents or would do so, but the Claims  
 9 Administrator advises that it never received any documents from them, apart from what is  
 10 attached to the Stinehart Declaration.

11           Anthony and Julia Crabtree object on the grounds that their claim was denied even  
 12 though they sent a “large package” of information and documents to the Claims Administrator.  
 13 The Claims Administrator advises that it has no record of ever receiving any package from  
 14 them. On March 3 (two weeks after the February 14 filing deadline), the Crabtrees faxed to  
 15 Class Counsel several “profit and loss statements” and other documents (although no tax  
 16 schedules or bankruptcy documents), which were all forwarded to the Claims Administrator and  
 17 added to their file. *See* Stinehart Decl. ¶ 8; Ex. A, Pgs. 1449-1509. They requested additional  
 18 time to submit further documentation of their losses. *Id.* at Pgs. 1453-1506. The Court has  
 19 discretion to receive new evidence (DE 252 ¶ 19) if it wishes to do so.

20           Dean and Michelle Orr submitted an untimely objection stating that they would be  
 21 “sending a box with receipts, order invoices, pictures and tax forms to support our case.” The  
 22 Claims Administrator advises that it did not receive any such box. *See* Stinehart Decl. ¶ 9; Ex.  
 23 A, Pgs. 1510-1517. The Court has discretion to give or not give more time to the Orrs.

24           **E. Bankruptcy Discharge But Minimal Proof of Losses**

25           Several claimants submitted a copy of a bankruptcy discharge but provided little or no  
 26 other proof of the amount of their losses. The Special Master decided that claims with proof of  
 27 bankruptcy but with inadequate proof of specific losses should be “allocated the minimum  
 28 \$2,000 on the assumption that filing for bankruptcy was predicated on well over \$10,000 in

1 losses and debt.” DE 322 at 2. Three of these claimants who were awarded \$2,000 object and  
 2 request an increased award.

3 Corrie Hemingway originally submitted to the Special Master a copy of his bankruptcy  
 4 discharge but only minimal additional information. The Special Master awarded him \$2,000,  
 5 but his net hardship payment is zero after the mandatory deduction of his prior \$2,000 Section  
 6 III BSM payment. In his objection, Mr. Hemingway has submitted some additional documents,  
 7 including a Schedule A from his 2003 and 2005 tax returns, which claim “Business Expenses”  
 8 totaling \$16,417, and 20% of this would be \$3,283.40. The Court has discretion whether or not  
 9 to consider this new evidence. Mr. Hemingway suggests that his award should be “more than  
 10 double” of “whatever the maximum payment is.” *See* Stinehart Decl. at Ex. A, Pgs. 1518-  
 11 1536.

12 Jafe Parsons submitted to the Special Master a letter and a copy of a Chapter 7  
 13 bankruptcy discharge. The letter indicated he had been a Quixtar IBO from 1992 to 2007. As  
 14 with Mr. Hemingway, the Special Master apparently decided to award \$2,000 to Mr. Parsons  
 15 (with a net payment of \$500 after the mandatory deduction of his \$1,500 Section III BSM  
 16 payment), based on the rationale that claims with proof of bankruptcy but inadequate proof of  
 17 specific losses should be “allocated the minimum \$2,000 on the assumption that filing for  
 18 bankruptcy was predicated on well over \$10,000 in losses and debt.” DE 322 at 2.

19 In his untimely objection, Mr. Parsons asks for his award to be increased. He attaches  
 20 new evidence, specifically several December 1995 order forms. *See* Stinehart Decl. at Ex. A,  
 21 Pgs. 1537-1557. The class period in this case runs from January 1, 2003. DE 162-2 ¶ 1.7. The  
 22 Court has discretion whether or not to consider this new evidence. DE 252 ¶ 19.

23 Derrick DeRoon also submitted to the Special Master a letter and a copy of his Chapter  
 24 7 bankruptcy discharge. In accordance with his standard rationale, DE 322 at 2, the Special  
 25 Master awarded Mr. DeRoon \$2,000. Mr. DeRoon’s untimely objection states that his family  
 26 lost “their entire life savings” and that \$2,000 “seems like a drop in the bucket” in light of their  
 27 losses. He asks for an increase in the amount of his award. No new evidence was submitted  
 28 with his objection. *See* Stinehart Decl. at Ex. A, Pgs. 1558-1569.

1                   **F.       Claude Zamor**

2                   The untimely objection of Claude Zamor is from a claimant residing in Haiti, and there  
 3                   is no indication that he ever operated a Quixtar business in the United States. He has not  
 4                   submitted any tax return schedules or bankruptcy documents. Only persons who were Quixtar  
 5                   IBOs “within the United States” are members of the Settlement Class. DE 162-2 §§ 1.14, 1.32.  
 6                   Mr. Zamor has already received a \$2,000 cash payment on his BSM claim. *See* Stinehart Decl.  
 7                   at Ex. A, Pgs. 1570-1583.

8                   **G.       Mark Smith**

9                   The objection of Mark Smith seeks compensation for losses incurred from 1992-1997.  
 10                  *See* Stinehart Decl. at Ex. A, Pgs. 1584-1635. The class period in this case runs from January 1,  
 11                  2003. DE 162-2 ¶ 1.7.

12                  **H.       Michael and Adrienne Prince**

13                  The Prince’s objection alleges that they went into bankruptcy as a result of their  
 14                  participation in Quixtar, and they submitted with their objection a copy of a 2008 Chapter 13  
 15                  discharge from a U.S. Bankruptcy Court. Their submission to the Special Master did not allege  
 16                  bankruptcy and did not include the discharge or any other Bankruptcy Court documents. Their  
 17                  original documents indicated they were suffering financial hardship and were being pursued by  
 18                  various creditors, but none of the submitted documents mentions Quixtar or indicates that the  
 19                  losses and the bankruptcy were the result of involvement with Quixtar. They submitted a Form  
 20                  1040 for 2004, 2005 and 2006, but no Schedule C was included, and no business loss was  
 21                  reported on line 12 on any submitted Form 1040. *See* Stinehart Decl. at Ex. A, Pgs. 1636-1751.  
 22                  As mentioned above, the Court has discretion to consider the Prince’s newly submitted  
 23                  documents if it wishes to do so.

24                  **II.      SECTION III BSM OBJECTIONS**

25                  The objections to the Special Master’s hardship award recommendations are entirely  
 26                  separate and distinct from the objections to the Claims Administrator’s denial of certain Section  
 27                  III BSM claims. The Court has not yet ruled on the eight pending Section III BSM objections,  
 28                  which Plaintiffs submitted to the Court on October 1, 2013 (DE 305), along with a Proposed

1 Order (DE 305-2). The adjudication of the 28 Section IV hardship objections (Part I, *supra*)  
 2 and the eight Section III BSM objections require resolution before final distributions are made  
 3 and the settlement is closed.

4 **CONCLUSION**

5 Plaintiffs take no position on whether any or all of the objections should be granted.  
 6 The Special Master has advised that, if the Court so requests, he will provide comments on the  
 7 objections. A Proposed Order is attached as Exhibit 2.

8 DATED: March 10, 2014

9 Respectfully submitted,

10 By: /s/ Stuart Singer  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2014, the foregoing was served via the CM/ECF system on the following counsel and via U.S. mail (without exhibits) on the objectors:

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